



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 01, 2022

IN THE MATTER OF:

Appeal Board No. 621642

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 621642 and 621643, the claimant appeals from the decisions of the Administrative Law Judge filed February 14, 2022, insofar as the decisions sustained the initial determination, holding the claimant not entitled to receive benefits, effective November 30, 2020, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law §

527 because the claimant did not have earnings within two quarters of her base or alternate base periods; and neglected to rule upon the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the claimant has submitted new evidence, that was not within her possession or control at the time of the prior hearings, regarding her status as an employee consultant with the Acacia Network and how she was paid by that employer. The Board has determined to provide the claimant another opportunity to submit such additional evidence and testimony.

At the remand hearing, the Judge shall take a complete record as to whether the claimant worked for the Acacia Network during her basic base or alternate period, whether she did so as an employee or independent contractor and the amount of her earnings from the Acacia Network, if any, in that period and

whether she could establish a valid original claim for benefits effective November 30, 2020.

Further testimony and other evidence shall also be received into the record on the issue of the claimant's eligibility for Pandemic Unemployment Assistance (PUA) benefits. Specifically, the judge shall question the claimant about when she became unemployed prior to applying for PUA benefits and whether she did so for any of the nine qualifying reasons identified under §

2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The hearing Judge may receive any other evidence necessary to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge , insofar as it sustained the initial determination, holding the claimant not entitled to receive benefits, effective November 30, 2020, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because

the claimant did not have earnings within two quarters of her base or alternate base periods; and neglected to rule upon the initial, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the initial determinations, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER